IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.245 OF 2005

Indian Oil Corporation Ltd. ... Petitioner.

vs.

M/s.Shah Manikchand Gangaram .... Respondent.

Mr.Janak Dwarkadas with Chirag Mody i/b. M/s.RMG Law Associates, for Petitioner.

Mr.Shah Alam Khan, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 1st December, 2005

P.C.:-

1. By this petition filed under Section 34 of the Arbitration and Conciliation Act,1996, the petitioner Indian Oil Corporation challenges the Award made by the sole Arbitrator dated 25th February,2005. It appears that pursuant to the licence granted by the Indian Oil Corporation i.e. the Petitioner, the respondent was running a petrol pump. The petrol pump was visited Anti Adulteration Cell 11.10.2003 and the inspection team noticed several discrepancies

including that the petrol that was sold at the petrol pump was adulterate, there was stock variation, additional tank was found in the licensed premises. After following the procedure laid down by the guidelines, the licence granted of the dealership was terminated. The arbitration clause was therefore invoked by the respondent. The learned Arbitrator was appointed. The learned Arbitrator heard both the sides and has made the Award. The learned Arbitrator has found that the petitioner has proved all the discrepancies that were noted by the inspection team but the learned Arbitrator has found that these discrepancies were found for the first time and therefore, in terms of the guidelines dated 3.5.2001 issued by the Government of India, the punishment of termination of dealership was excessive. The learned Arbitrator therefore, has set aside the termination of the dealership. The consequence of the Award is that now the dealership will have to be restored to the respondent. It is this Award which is challenged in the petition.

2. Perusal of the Award shows that the irregularities and discrepancies that were found by the inspection team were of serious nature in as much as the additional unauthorised tank was found to have been constructed by the respondent, the petrol sold was found to be adulterate and there was also found stock variation in the registered and actual petrol. The learned Arbitrator has also found that the

principles of natural justice were duly followed before imposing the punishment. The learned Arbitrator has in fact found that the respondent has admitted the discrepancies that were found by the inspection team, still has interfered with the order terminating the dealership. The learned Arbitrator in his Award has stated thus:-

> "It is the contentions of the Respondents that the covering Note of MDG 2001states that "the competent authority of the concerned Oil Co. can take appropriate higher punitive action against erring dealer including in the first or any instance". In view of this, the competent authority of the Respondents had terminated the dealership and thus the Termination of dealership of the Claimants cannot be said to be contrary to the MDG. The Respondents have, however, failed to prove breach of any specific term of the Dealership Agreement and also any severity of alleged irregularity which would have warranted exercise of power available under the covering note of MDG. However, since for each of the 4 irregularities committed, specific punishment has been specified in the MDG, the severe most punishment being Rs.20,000/- fine and suspension of supplies for 30 days should have been

> made applicable in the present case in view of this incidence of irregularities being the first instance."

The above referred paragraph shows that the only reason for which the learned Arbitrator has directed restoration of the dealership is that the breach of specific terms of the Dealership agreement is not proved and according to the guidelines, for each irregularities if they are found for the first time, the punishment of imposing fine is provided and therefore, termination of the dealership could not have been ordered.

2. So far as the first aspect regarding there being no breach of the terms of the dealership agreement is concerned, perusal of the dealership agreement shows that clause 5 and clause 6 are relevant which read as under:-

> "5. The Dealer shall take every responsible precaution against contamination of the Company's precautions against contamination products by water, dirt or other things injurious to their quality and shall not in way directly or indirectly alter the Company's standard quality of products as delivered. The Company shall have the right to exercise at its discretion quality control measures for

products marketed by the Company.

6. The Dealer will not during the currency of this Agreement sell or be in any way Dealers not to sell concerned in selling the Petroleum products of any other Company or producer without the product other companies previous consent in writing of the Company. “

The agreement thus casts duty on the dealer to take precautions against contamination of the Company's products and the dealer has to sell only the products of the Company and no other product.

The clause 15 (f) of the dealership agreement is relevant which reads as under:-

“15. In the event of the Company agreeing to the sale by the Dealer to the public of Petrol/High Speed Diesel Oil and other products of the Company by means of Petrol/High Speed Diesel Oil Pump and/or other apparatus, the following provisions shall apply:

(f) The Dealer shall keep and maintain such records of sales etc., in such manner as may be record of sales prescribed by the Company and submit the same for inspection

or demand by any office of the Company."

This clause casts duty on the dealer to keep and maintain the record. The clause 20(b) of the dealership agreement is also relevant which reads as under:-

> "20. In consideration of the premises and of the services rendered by the Company to Dealer in the development of the outlet dealer agrees with the Company as follows:-
>
> (b) The Dealer shall not add to or alter the buildings or structures of the assets on the site or alter the position or layout of the outfit or any part thereof except with the previous written consent of the Company which toward shall not be withheld unreasonably."

One of the discrepancies found by the Inspection Team was that the product which was being sold on the petrol pump of the respondent was adulterate in as much as the inspection team found density variation in the product that was being sold. This is clearly contrary to the terms in the Contract noted above. Similarly, it is also found that the respondent has constructed additional tank without the

permission of the petitioner. Thus, it is clearly established that the petitioner had proved before the learned Arbitrator that the respondent had committed breach of the specific conditions of the dealership agreement.

3. So far as the second ground is concerned, the letter dated 3.5.2001 in clear terms says that these are the general guidelines and the Oil Company can take appropriate higher punitive action against erring dealer including in the first or any instance. The relevant paragraph in the letter dated 3.5.2001 reads as under:-

> "The details mentioned at point iv above are general guidelines and notwithstanding what has been stated above, the Competent Authority of the concerned Oil Company can take appropriate higher punitive action against erring dealer including in the first or any instance."

Therefore, in the given case if the Oil Company taking overall view of the discrepancies which are found, decides that though it is the first case, the dealership deserves to be discontinued, then it cannot be said that the Oil Company lacks the power to do that.

4. So far as the order made by the learned Arbitrator for

restoration of the dealership is concerned, it has to be said that the order is clearly in breach of the Law laid down by the Supreme Court in the Judgment in the case of "E.Venkatakrishna vs. Indian Oil Corporation, Judgment Today 2000(10) SCC 558". The observations found in paragraph nos. 4, 5 and 6 are relevant. They read as under:-

> “4. The Award was challenged by the respondent in proceedings under Section 30 of the Arbitration Act taken before a learned Single Judge of the Madras High Court. The learned Single Judge rejected the challenge. The respondent preferred an appeal and the Division Bench, in the judgment and order that is impugned before us, upheld the challenge. It said, “There is considerable force in the contention of the appellant that what is arbitrable under Clause 37 is only the dispute or difference in relation to the agreement. The question of restoration of distributorship would not arise under the agreement. Therefore, we have no hesitation in holding that the Arbitrator was in error and in fact had no jurisdiction to direct restoration of

distributorship to the 1st respondent. “

5. In our view, the Division Bench was right. All that the Arbitrator could do, if he found that the termination of the distributorship was unlawful, was to award damages, as any civil Court would have done in a suit.

6. We find it difficult to accept the contention on behalf of the appellant that what was referred to the Arbitrator was the issue of restoration of distributorship in the sense that the Arbitrator could direct, upon holding that the termination was unlawful, that the distributorship should be restored. We think that the reference itself contemplated consequential damages for wrongful termination in any event and assuming that there is any error in so reading the reference, it is difficult to hold that the Arbitrator was thereby vested with jurisdiction to award restoration. “

The Supreme Court has thus laid it down as the Law that in case if the

termination of the dealership is found illegal by the Arbitrator, the Arbitrator can award damages and in no case restoration of the dealership can be awarded. The Supreme Court in its judgment in the case "Indian Oil Corporation Ltd. vs. Amritsar Gas Service and others, (1991) 1 Supreme Court Cases 533" has also considered this question and in that judgment the Supreme Court has laid down that the Arbitrator cannot direct restoration of the dealership. Thus, taking any view of the matter therefore, even if the learned Arbitrator found that the order terminating the dealership was not proper, the learned Arbitrator could not have directed restoration of the dealership. Really speaking in view of the serious nature of the discrepancies found, the learned Arbitrator could not have at all interfered with the order terminating the dealership. In the result, therefore, the petition succeeds and is allowed. The Award made by the learned sole Arbitrator which is impugned in the petition is set aside. The respondent is directed to pay cost of this petition to the petitioner as incurred by the petitioner.